91-767

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No. _____

In the Supreme Court of the United States

OCTOBER TERM, 1991

REPUBLIC NATIONAL BANK OF MIAMI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether a stay or supersedeas bond is necessary to preserve appellate jurisdiction in a civil forfeiture case?

PARTIES TO THE PROCEEDING

Petitioner: Republic National Bank of Miami, a national banking association.*

Respondent: United States of America

*Other parties below:***

Thule Holding Company

Indalecio Iglesias

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* Pursuant to Sup. Ct. R. 29.1, Republic is a wholly owned subsidiary of Republic Banking Corporation of Florida, a Florida corporation. There are no non-wholly owned subsidiaries of Republic.

** As this is a civil forfeiture action, the property, One Single Family Residence Located at 6960 Miraflores Avenue, was the "defendant" in the courts below.

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OCTOBER TERM, 1991

REPUBLIC NATIONAL BANK OF MIAMI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Republic National Bank of Miami ("Republic") hereby petitions for a writ of certiorari and requests that this Court grant the petition, vacate the judgment of the court of appeals and order the court of appeals to reinstate Republic's appeal.

REFERENCE TO OPINIONS BELOW

The opinion of the court of appeals is reported as *United States v. One Single Family Residence Located at 6960 Miraflores Avenue*, 932 F.2d 1433 (11th Cir. 1991), and is reproduced in the Appendix to this Petition at pages A-1-9. The memorandum opinion of the district court is reported as *United States v. One Single Family Residence Located at 6960 Miraflores Avenue*, 731

F.Supp. 1563 (S.D. Fla. 1990), and is reproduced in the Appendix to this Petition at pages A-10–29.

JURISDICTION

The judgment appealed from was rendered by the Eleventh Circuit Court of Appeals on June 10, 1991. A-1–9. A timely petition for rehearing and suggestion for rehearing *en banc* was denied by order dated August 7, 1991. A-34–35. This Court's jurisdiction to review the judgment by writ of certiorari is invoked under 28 U.S.C. §1254(1).

RULES AND STATUTES INVOLVED

This Petition involves Rule 3(a) of the Federal Rules of Appellate Procedure, which provides:

> **Rule 3. Appeal as of Right — How Taken**
>
> (a) Filing the Notice of Appeal. An appeal permitted by law as of right from a district court to a court of appeals shall be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. §1292(b) and appeals in bankruptcy shall be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

STATEMENT OF THE CASE

The Government filed this action under 21 U.S.C. §881(a)(6), seeking civil forfeiture of a single family home located in Miami, Dade County, Florida. Petitioner Republic held a mortgage which encumbered the home and filed its Answer and Verified Claim as mortgagee. By Stipulation and Court Order, the real property was sold during the pendency of the case for

approximately $1 million, which was turned over to the United States Marshal for the Southern District of Florida as a substitute for the real property.

After a trial on the merits, the district court entered judgment denying Republic's mortgage claim and forfeiting the property. A-30–33. Republic timely filed its notice of appeal but did not post a bond to supersede the district court's judgment. Thereafter, at the *ex parte* request of the Government, the United States Marshal transferred the cash proceeds to the Asset Forfeiture Account of the United States Treasury. The Government then moved to dismiss the appeal, which motion was granted by a panel of the Eleventh Circuit. A-36–37. Republic unsuccessfully petitioned for rehearing and suggestion for rehearing *en banc*. A-34–35.

In its Opinion, the Eleventh Circuit held that once the Government transferred the cash proceeds of the sale to the Asset Forfeiture Account purportedly outside of the Southern District of Florida, both the district court and the appellate court were divested of jurisdiction. A-5–6. The court ruled that *United States v. One Lear Jet Aircraft*, 836 F.2d 1571 (11th Cir.) (*en banc*), *cert. denied*, 487 U.S. 1204 (1988), "controls the result in this case." A-5. In *One Lear Jet*, the Eleventh Circuit, in a sharply divided 6-5 decision, ruled that "because removal of the *res* from a court's territorial jurisdiction destroys the court's *in rem* jurisdiction, this Court does not have jurisdiction to hear [the claimant's] appeal." 836 F.2d at 1573 (Citations omitted.) In the decision below, the Panel rejected all of Republic's contentions, including that the court continued to have *in personam* jurisdiction even after the *res* was removed by the Government. A-6–7. Republic's Petition for rehearing and suggestion for rehearing *en banc* cited to the then published cases discussed in this petition.[1]

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[1] Since the filing of Republic's Petition for Rehearing, the First, Third and Eleventh Circuits have issued published decisions which are discussed in this Petition.

REASONS FOR GRANTING THE WRIT

There is presently a direct, recurring and irreconcilable conflict among nine of the circuits on the jurisdictional issue presented which shows no sign of resolution. Specifically, the First, Second, Third and Fourth Circuits have expressly and directly rejected the ruling and rationale of the Eleventh Circuit below and hold that a court has jurisdiction of a civil forfeiture action even if the Government removes the *res*. Conversely, the Sixth, Seventh, Ninth and Eleventh Circuits adhere to the rule that the court loses jurisdiction once the Government removes the *res*. The Fifth Circuit has two lines of cases which conflict with each other on this issue.

This issue is of great significance. Civil forfeiture actions are a major weapon of the United States in its war on drugs. The Government currently holds in excess of $1 billion in forfeited non-cash property.[2] In fiscal year 1989, the Government collected over $600 million in forfeited cash.[3] In 1990, of the 31,763 federal civil cases commenced by the Government, 6,019, or approximately 20%, were forfeiture or penalty cases.[4]

Appellate review is an important fundamental right in all proceedings. It is critical in civil forfeiture actions because the Government can forfeit property merely by showing probable cause that the property it seeks to forfeit has been used, is intended for use, or was acquired in violation of a criminal statute. *E.g., United States v. One 56-Foot Motor Yacht Named Tahuna*, 702 F.2d 1276, 1281-82 (9th Cir. 1983). Probable cause, in itself a low burden of proof, can be established, and usually is, by hearsay evidence of undisclosed government informants. 702 F.2d at 1282-83. Claimants asserting the "innocent owner" defense

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[2] General Accounting Office June, 1991 Report to Congressional Requesters "Asset Forfeiture Noncash Property Should Be Consolidated Under the Marshals Service," at 5.

[3] *Id* at 4.

[4] Table C2, Administrative Offices of the U.S. Courts, Analyses and Reports Board, Statistics Division.

have the burden of proving a negative. *United States v. Four Million, Two Hundred Fifty-Five Thousand*, 762 F.2d 895, 906 (11th Cir. 1985). Appellate review is therefore the last recourse of a party whose property or property interest has been forfeited. To eliminate the right of appeal because the losing party does not (or cannot) post a bond to prevent the Government from removing the forfeited property from an artificially defined territory during the appeal is unfair and illogical.

The issue, whether a claimant seeking to appeal an adverse forfeiture judgment must obtain a supersedeas bond in order to appeal, raises important and recurring questions of federal appellate jurisdiction. Resolution of the conflict among the circuits is necessary to end the anomaly that in approximately half of the United States, a claimant can seek appellate review of a Government forfeiture of his property simply by filing a notice of appeal, Rule 3(a), Fed.R.App.P., while in the other half of the country, to prevent the Government from defeating jurisdiction, a claimant must file a notice of appeal *and* post a supersedeas bond. In light of the Government's increasing use of the civil forfeiture statutes to seize property, this is an issue of immense importance which only this Court can now settle.

THE CIRCUITS ARE IN CONFLICT AS TO WHETHER A SUPERSEDEAS BOND IS NECESSARY TO APPEAL FROM A CIVIL FORFEITURE JUDGMENT.

By statute and court rule, civil forfeiture proceedings follow the *in rem* rules of admiralty. 21 U.S.C. §881(b); Supplemental Rules for Certain Admiralty and Maritime Claims. Admiralty jurisdiction historically was based on the "long-standing admiralty fiction that a vessel may be assumed to be a person for the purpose of filing a lawsuit and enforcing a judgment." *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 22-23 (1960). The consequence of this legal fiction is that in admiralty cases, "[t]he presence of the res within a Court's territorial jurisdiction is necessary before the Court can proceed to adjudication." *L.B.*

Harvey Marine, Inc. v. M/V "River Arc", 712 F.2d 458, 459 (11th Cir. 1983). Thus, "where the res is no longer before the court, its in rem jurisdiction is destroyed, and any appeal from its decision is rendered moot." *Taylor v. Tracor Marine, Inc.*, 683 F.2d 1361, 1362 (11th Cir. 1982), *cert. denied*, 460 U.S. 1012 (1983).

The majority opinion in *One Lear Jet, supra*, relied on this body of admiralty case law, specifically following *Taylor* and *Harvey*, to dismiss an appeal from a judgment forfeiting an aircraft, because the Government flew the aircraft out of the jurisdiction. Both the dissent in *One Lear Jet* and the cases which have rejected the majority opinion have attacked the application of this admiralty rule to civil forfeiture cases.

One Lear Jet was a sharply divided 6 to 5 decision of the Eleventh Circuit *en banc*. Three judges wrote separate dissenting opinions. The late Judge Vance wrote a lengthy dissenting opinion in which he sharply criticized the majority's analysis: "The majority opinion is disturbing on three different levels. In an important respect it offends fundamental principles of fairness. It also represents a departure from common sense. Finally, it is analytically flawed." 836 F.2d at 1577. As discussed below, the subsequent opinions of several circuits which have rejected the majority opinion in *One Lear Jet* have specifically relied upon Judge Vance's dissenting opinion.

Judge Clark wrote a separate dissenting opinion, in which he reasoned that prior admiralty cases and a line of Fifth Circuit authority had relaxed the requirement that appellate jurisdiction depends upon the location of the *res* within the territorial jurisdiction of the court. Judge Clark rejected the majority's position that the claimant should have posted a supersedeas bond to preserve the right to appeal:

> In other types of proceedings, when a judgment for property is rendered, the losing party has a choice. He need not post a bond. He can still appeal the judgment. If he wins on appeal, he can bring an action to recover his property or its value.

> The rules established by the court today enables the United States to defeat the right to appeal a forfeiture judgment for mobile property if the losing party has insufficient funds to post a bond.

836 F.2d at 1584.

Judge Edmondson wrote a third dissenting opinion. In his view, the court had *in personam* jurisdiction: "[W]hen a plaintiff comes into a court system requesting the courts' assistance in resolving a case, the plaintiff submits its person to the jurisdiction of those courts until the case is finally concluded ...." *Id.*

Since *One Lear Jet,* three circuits have followed the dissenters in *One Lear Jet,* and one other circuit has followed the dissenters where money is forfeited. On the other hand, three circuits have agreed with the majority opinion in *One Lear Jet.* One circuit has cases which follow both views.

The first case to address the issue after *One Lear Jet* was *United States v. Aiello,* 912 F.2d 4 (2d Cir. 1990), *cert. denied,* _____ U.S. _____, 111 S.Ct. 757 (1991), in which the Second Circuit held:

> We think the dissenters in *One Lear Jet* have the better of the argument. As they point out, the concepts of continuing territorial presence and control in forfeiture actions derive from the admiralty fiction of a ship's personality, a legal construct of dubious validity. With the force of these concepts diminishing in admiralty, they surely ought not to be routinely invoked to deny citizens an opportunity for appellate review of judgments forfeiting their property to the Government.

912 F.2d at 6-7 (citations omitted).

Thereafter, in *United States v. $95,945.12,* 913 F.2d 1106 (4th Cir. 1990), the Fourth Circuit also rejected the majority opinion in *One Lear Jet:*

> We find the dissent in *One Lear Jet* persuasive. . . . That rule was based on the antediluvian approach that conceived of the ship as "the offending thing" which allowed actions only against the ship. Such an approach, reminiscent of deodand, however, has been in decline for years, having been weakened by both the Supreme Court and lower courts . . . . We conclude that invocation of the *in rem* rule is particularly inapposite to defeat jurisdiction in a government-initiated civil forfeiture action.

913 F.2d at 1108-09. The Fourth Circuit quoted with approval Judge Vance's statement that

> [f]orfeiture actions are unique in that they are the only proceedings where the government may confiscate private property on a mere showing of probable cause . . . . [T]o [then] eliminate the right of appeal, the most important safeguard against abuse, is indeed a drastic step.

Id. at 1109. The court also explained that

> unlike the typical case where the defendant ship stealthily absconds from port and leaves the plaintiff with no *res* from which to collect, here the defendant *res* is in the possession of the United States and thus in no danger of disappearing.

Id. The Fourth Circuit agreed with the dissenters in *One Lear Jet* that "by initiating the forfeiture proceeding in the district court, the government has subjected itself to this court's *in personam jurisdiction* . . . . [and] should not be allowed to escape 'through its subsequent jurisdictional exceptions' to the claimant's appeal." *Id.*

The First Circuit addressed the issue in *United States v. One Lot of $25,721 in Currency*, 938 F.2d 1417 (1st Cir. 1991), and aligned itself with the Second and Fourth Circuits:

> We are persuaded by the dissenters in *One Lear Jet* and the Second and Fourth Circuits that the time has come to jettison the "no res, no jurisdiction" rule. There is no good reason why the government should be allowed to insulate

> itself from the appellate process by wrapping itself in the mantle of an admiralty fiction designed at an earlier time to meet a problem totally unrelated to present day civil forfeiture proceedings.

938 F.2d at 1419-20. The court rejected the view that the Government can defeat appellate jurisdiction by moving money from one Government bank account to another:

> Jurisdiction based on the location of the res is particularly inapposite to a currency forfeiture case. The government has possession and control of the currency from the time it seizes it. The execution of the judgment merely transfers it from one government pocket to the other. Basing jurisdiction on what pocket contains the currency is nothing more than a shell game.

938 F.2d at 1420. The First Circuit specifically disagreed with the Eleventh Circuit's holding that a claimant must obtain a supersedeas bond in order to appeal:

> In addition to being bereft of logic it is also unfair. As Judge Clark pointed out in *One Lear Jet*: "In other types of proceedings when a judgment for property is rendered, the losing party has a choice. He need not post a bond. He can still appeal the judgment. If he wins on appeal he can bring an action to recover the property or its value."

Id.

The Third Circuit arrived at the same conclusion in cases involving currency forfeitures. In *United States v. $1,322,242.58*, 938 F.2d 433 (3d Cir. 1991), the Third Circuit held that the court retained appellate jurisdiction even though the Government had transferred the currency from the Justice Department's Seized Asset Deposit Fund to another treasury account, the Justice Department's Asset Forfeiture Fund. The court explained:

> [W]e do not think that rules concerning physical location can be applied in any meaningful sense to an incorporeal *res*

> such as that involved in this case. The *res* at issue here is merely an entry in a Justice Department account with the United States Treasury. In other words, the *res* is an obligation on the part of the Treasury to disburse the specified sum to the Department of Justice. Deeming this obligation to be located at any particular place within the United States would be a complete fiction. If we are compelled, however, to determine where this obligation is "located," we cannot say that the obligation does not exist in every part of the country, including the District of Delaware.

938 F.2d at 437-38.

The dissenters in *One Lear Jet* have not, however, had unanimous success in persuading other courts. In two unpublished decisions, the Sixth Circuit, citing the majority opinion *One Lear Jet* as well as other decisions, dismissed two civil forfeiture appeals where the property was sold and the proceeds distributed. *United States v. One 1984 Mercedes,* Case Number 90-3674 (6th Cir. March 29, 1991); *United States v. Cadillac Sedan de Ville,* 1991 WL 89935 (6th Cir. May 30, 1991). The Seventh Circuit, in *United States v. Tit's Cocktail Lounge,* 873 F.2d 141 (7th Cir. 1989), adhered to the rule that "[j]urisdiction in such in rem actions is based on the res being located in the district court's territorial jurisdiction, and removal of the res divests this court of appellate jurisdiction." 873 F.2d at 143. Similarly, the Ninth Circuit, in *United States v. $29,959,* 931 F.2d 549 (9th Cir. 1991), reiterated the rule that "jurisdiction in an *in rem* action therefore generally ends with the removal of the res." 931 F.2d at 551.[5]

The Eleventh Circuit's dismissal of the appeal in this case and denial of Republic's *en banc* suggestion signify that the Eleventh Circuit is not willing to reconsider its 6-5 ruling in *One Lear Jet.* Since that decision, the Eleventh Circuit has twice

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[5] The Eighth Circuit has not addressed the issue in civil forfeiture cases, but does follow the rule in admiralty cases. *See Bank of New Orleans & Trust Co. v. Marine Credit Corp.,* 583 F.2d 1063 (8th Cir. 1978). The Tenth and D.C. Circuits are the only Circuits which have not addressed the issue raised by this Petition.

acknowledged the conflict among the circuits but has adhered to its view on this issue. *United States v. Four Parcels of Real Property in Greene and Tuscaloosa Counties*, 941 F.2d 1428, 1436 n.18 (11th Cir. 1991) (*en banc*); *United States v. Certain Real and Personal Property*, _____ F.2d _____, 5 FLW Fed. C.1650 (11th Cir. October 4, 1991).

The division among the circuits is fully developed and ripe for adjudication and resolution by this Court.[6] The conflict includes sharp disagreements on every aspect of the jurisdictional issue. For instance, a panel of the Ninth Circuit has reasoned that in a currency forfeiture case, once the funds are paid into the United States Treasury, a court cannot constitutionally compel the Government to repay the money since such an order "would require an impermissible payment of public funds not appropriated by Congress." *United States v. $57,480.05 United States Currency*, 722 F.2d 1457, 1459 (9th Cir. 1984). The Second Circuit, in *United States v. Aiello*, 912 F.2d 4, 7 (2d Cir. 1990), *cert. denied*, _____ U.S. _____, 111 S.Ct. 757 (1991), expressly rejected that reasoning, stating that

> [w]e do not believe that funds collected by the United States pursuant to a judgment of the District Court are insulated by the Appropriations Clause from return to the rightful owner in the event of a reversal of that judgement simply because the funds are held in the Treasury during the course of the litigation.

The Third Circuit, in *$1,322,242.58 supra*, and the Fourth Circuit, in *$95,945.18, supra*, have both agreed with the Second Circuit on this point.

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[6] The Fifth Circuit has not issued an opinion on the subject since *One Lear Jet*. In two prior opinions, however, it seemingly has agreed with both the majority and dissenting views. *Compare United States v. $79,000 in United States Currency*, 801 F.2d 738, 739 (5th Cir. 1986) ("[w]here no supersedeas is filed or steps taken to supersede judgment and the marshal surrenders custody, neither the district court nor the appellate court retains in rem jurisdiction") *with United States v. An Article of Drug*, 725 F.2d 976, 984 (5th Cir. 1984) ("[W]e refuse, in this case, to elevate form over substance. Both the controversy and the parties being before the court, the action is not moot and need not be dismissed.")

The Eleventh Circuit's opinion in *One Lear Jet*, and the circuit decisions which follow it, are also inconsistent with this Court's admiralty decisions and cases which have all but eliminated the distinctions between *in personam* and *in rem* bases for jurisdiction.

In the admiralty area, this Court, in *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19 (1960), severely criticized the ancient admiralty fiction. This Court recognized that the fiction was created to broaden jurisdiction: "A purpose of the fiction, among others, has been to allow actions against ships where a person owning the ship could not be reached and it can be very useful for this purpose still." 364 U.S. at 23. Based on this understanding of the purpose for the rule, this Court rejected the application of the admiralty fiction to defeat a *forum non conveniens* transfer of an admiralty case to a jurisdiction other than where the ship was found:

> We are asked here, however, to transplant this ancient saltwater admiralty fiction into the dry-land context of *forum non conveniens*, where its usefulness and possibilities for good are questionable at best. In fact, the fiction appears to have no relevance whatever in a District Court's determination of where a case can most conveniently be tried. A fiction born to provide convenient forums should not be transferred into a weapon to defeat that very purpose.

Id. In its opinion, this Court quoted with approval its earlier opinion, in *British Transp. Comm. v. United States*, 354 U.S. 129, 139 (1957), in which this Court observed: "Admiralty practice, which has served as the origin of much of our modern federal procedure, should not be tied to the mast of legal technicalities it has been a forerunner in eliminating from other federal practices."

There have been similar developments in the law relative to *in personam* and *in rem* jurisdiction. Initially, there was a body of law requiring, as a prerequisite for *in rem* or *quasi in rem* jurisdiction, that the res be "seized" by the court. *See Pennington*

v. Fourth National Bank, 243 U.S. 269 (1917) ("[t]he only essentials to the exercise of the state's power are presence of the res within its borders, its seizure at the commencement of proceedings, and the opportunity of the owner to be heard"). This body of law must be considered in the context of what was then a narrow definition of *in personam* jurisdiction. At that time *in rem* jurisdiction expanded the opportunity for claims to be heard and wrongs to be corrected. *See Pennoyer v. Neff*, 95 U.S. 714 (1877).

With the expansion of *in personam* jurisdiction, *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), the distinction between the *in personam* and *in rem* jurisdictional bases began to fade, culminating in this Court's opinion in *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977): "The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification." This Court concluded in *Shaffer* that the *International Shoe* "minimum contacts" analysis must measure "all assertions of state-court jurisdiction." *Id. See Burnham v. Superior Court*, _____ U.S. _____, 110 S. Ct. 2105, 2116 (1990), which explains "[t]he logic of *Shaffer's* holding — which places all suits against absent non-residents on the same constitutional footing, regardless of whether a separate Latin label is attached to one particular basis of contact ...."

We submit that the decision below cannot be reconciled with these precedents of this Court. Virtually all of the circuits have issued decisions on this important issue of appellate jurisdiction. The circuits are equally divided. This fully developed conflict among the circuits should be resolved by this Court at this time.

CONCLUSION

This Court should grant the petition for writ of certiorari, vacate the judgment below, and order the appellate court below to reinstate Republic's appeal.

Respectfully submitted,

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October 31, 1991

No. _____

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APPENDIX

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UNITED STATES OF America,
Plaintiff-Appellee,

v.

ONE SINGLE FAMILY RESIDENCE
LOCATED AT 6960 MIRAFLORES
AVENUE, etc., Defendant,

Republic National Bank of Miami,
Claimant-Appellant,

Thule Holding Corp., Claimant

No. 90-5295.

United States Court of Appeals,
Eleventh Circuit.
June 10, 1991.

Appeal from the United States District Court for the Southern District of Florida.

Before KRAVITCH and BIRCH, Circuit Judges, and DYER, Senior Circuit Judge.

DYER, Senior Circuit Judge:

This is an appeal of a civil forfeiture case brought by the United States against a parcel of real property situated in the Southern District of Florida. During the pendency of the action below, the real property was sold pursuant to an order of interlocutory sale. The proceeds of the sale were placed in the United States Marshal's account. A final judgment of forfeiture was entered on March 15, 1990. The claimant, Republic National Bank, holder of a mortgage lien on the property, timely filed its notice of appeal, but did not file a motion to stay execution or post a supersedeas bond. On April 20, 1990, the United States Marshal executed the judgment and transferred the proceeds of the interlocutory sale to the Asset Forfeiture Account of the United States Treasury. The United States filed its motion to dismiss the appeal on the ground that this transfer divested this court from

exercising *in rem* jurisdiction over the case. We grant the motion and dismiss the appeal for want of jurisdiction.

Facts

The United States initiated this *in rem* action seeking civil forfeiture of a single family residence located in the Southern District of Florida. The complaint alleged that Indalecio Iglesias owned the property, that he had engaged in narcotics transactions, and had used the proceeds of the transactions to purchase the property. The complaint sought forfeiture under 21 U.S.C. §881(a)(6). Service perfecting *in rem* jurisdiction was made by arresting the defendant property and by giving publication of notice in conformity with Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C(4). Additionally, the government sent a notice of the suit to the potential claimant Republic National Bank, who was a mortgagee of the defendant property. Republic filed a claim and answer asserting an "innocent owner" defense.

On May 25, 1988, the government filed an agreed motion seeking a court order authorizing an interlocutory sale of the residence. The motion provided that the proceeds of the sale would be held by the United States Marshal and that the claims to the residence would then attach to the proceeds held by the Marshal, and be subject to the future determination of the court, without prejudice to the rights of any claimant. On May 31, 1988, an order for interlocutory sale was entered by the district court. It provided that all interests of any lienor and claimants would automatically transfer to the proceeds of the sale. The order also instructed the United States Marshal for the Southern District of Florida to retain custody of the proceeds of the sale pending the court's further order. This property was thereafter sold for approximately one million dollars.

During the pendency of the action, the grand jury indicted Indalecio Iglesias in the Southern District of Florida. He was alleged to be the real owner of the property, although Thule

Holding Corporation was the record owner. Iglesias was charged with criminal violations pertaining to the subject residence.

On March 15, 1990, the district court entered a final judgment of forfeiture and directed the United States to dispose of the remaining proceeds of the interlocutory sale, in accordance with law.

Republic timely filed its notice of appeal, but did not file a motion to stay execution of the final judgment or post a supersedeas bond. On April 20, 1990, the United States Marshal executed the judgment and transferred the proceeds of the interlocutory sale to the Asset Forfeiture Account of the United States Treasury.

Contentions of the Parties

On the merits of this appeal, Republic, as mortgagee, seeks to reverse the judgment of forfeiture against it for two reasons. First, it argues that the district court erred in applying a "constructive knowledge", instead of an "actual knowledge", standard to forfeit Republic's mortgage; and second, the court utilized clearly erroneous findings of fact on which to base its legal conclusions. Since the government's motion to dismiss the appeal is dispositive, we do not reach the merits.

The United States contends that when the United States Marshal for the Southern District of Florida executed the final judgment of forfeiture by transferring the substituted *res* from his custody to the Asset Forfeiture Account, no *res* remained in that district; ergo, the transfer divested the district court and this court from exercising *in rem* jurisdiction in this case.

Republic contends that there is continuing jurisdiction in this court because (1) by enacting 21 U.S.C. § 881(j) Congress modified the requirement that the *res* be within the court's territorial jurisdiction for § 881 forfeiture actions; (2) the district court had *in personam* jurisdiction; (3) there was consent to or estoppel to deny jurisdiction.

Jurisdiction Under 21 U.S.C. § 881(j)

Republic argues that Congress has modified the requirement that the *res* be within the court's territorial jurisdiction for Section 881 forfeiture actions and gives this court continuing jurisdiction to hear this appeal. Section 881(j) provides:

> In addition to the venue provided for in Section 1395 of Title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this Section, a proceeding for forfeiture under this Section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

Republic reads the statute to mean that once Iglesias was indicted and found in the Southern District of Florida, the effect, under Section 881(j) is to add two bases, in addition to the fact that the property was located in this district, on which the court continues to have jurisdiction even after the property is removed from the district.

We find no support for this novel proposition. By its clear terms Section 881(j) simply affords the government a choice of venue as to where to bring a forfeiture action. It may choose to prosecute the forfeiture action either in the district where the *res* is located, in the district of the criminal prosecution, or the district in which the owner is found. This choice does not extend to claimants. Here the *res*, which was alleged to be owned by Iglesias, was forfeited in the Southern District of Florida. Republic filed its claim in the same district. The fact that Iglesias was indicted in the same district after the institution of the forfeiture proceedings is of no moment. Nor does the fact that Iglesias was found in the Southern District of Florida give continuing jurisdiction after the *res* has been removed. He never filed a claim and was never a party to the lawsuit. Finding Iglesias in the district was not necessary to effect the *in rem* forfeiture. Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C(4)

only requires publication and seizure of the defendant property to notify potential claimants. The only basis for jurisdiction in this case is that the defendant property was located and arrested in this district. Accordingly, we find the provisions of Section 881(j) to be irrelevant to this Action.

United States v. One Lear Jet Aircraft, 836 F.2d 1571 (11th Cir.) (en banc), *cert. denied*, 487 U.S. 1204, 108 S.Ct. 2844, 101 L.Ed.2d 881 (1988) controls the result in this case. There the government initiated a forfeiture proceeding against a Lear Jet aircraft located in the Southern District of Florida pursuant to 8 U.S.C. § 1324(b). The aircraft had been used to enter the United States by persons who made material misrepresentations on their visa applications. Leybda Corporation filed a claim to the aircraft, but, after trial, the district court entered a judgment of forfeiture for the United States. Leybda filed a timely notice of appeal, but did not file a motion for stay or judgment or a supersedeas bond. The government executed the judgment by removing the aircraft to Missouri. On *en banc* reconsideration of this *in rem* jurisdictional issue, the court held that:

> We now hold that, because removal of the *res* from a court's territorial jurisdiction destroys that court's *in rem* jurisdictional, *Pennington v. Fourth National Bank*, 243 U.S. 269, 37 S.Ct. 282, 61 L.Ed. 713 (1917), this Court does not have jurisdiction to hear Leybda's appeal. The general rule of *in rem* jurisdiction is that the court's power derives entirely from its control over the defendant *res*. *Id.* at 272, 37 S.Ct. at 283; *L.B. Harvey Marine, Inc. v. M/V River Arc*, 712 F.2d 458, 459 (11th Cir. 1983). Where an appellant fails to file a stay of judgment or a supersedeas bond, and the *res* is removed from the court's territorial jurisdiction, the appellate court does not have *in rem* jurisdiction. *Taylor v. Tracot Marine, Inc.*, 683 F.2d 1361, 1362 (11th Cir. 1982), *cert. denied*, 460 U.S. 1012, 103 S.Ct. 1252, 75 L.Ed.2d 481 (1983); *Parks v. B.F. Leaman & Sons, Inc.*, 279 F.2d 529, 532 (5th Cir. 1960). This Circuit has recently reaffirmed this

traditional rule. *See Harvey Marine*, 712 F.2d at 459; *Taylor*, 683 F.2d at 1362.

Id. at 1573. We reiterated this rule in *United States v. One 1983 Homemade Vessel Named Barracuda*, 858 F.2d 643, 647 (11th Cir. 1988).

In *United States v. $57,480.05 U.S. Currency and Other Coins*, 722 F.2d 1457 (9th Cir. 1984), after a judgment of forfeiture was entered, the United States Marshal executed the judgment by delivering the funds held by him to the United States Attorney, who caused them ultimately to be paid into the United States Treasury. The claimant never sought a stay of execution of the judgment. The court dismissed the appeal holding that:

> In conducting this forfeiture proceeding, the district court was exercising *in rem* jurisdiction and the currency was the *res*. The power of the court derived entirely from its control over the defendant *res*. (citations omitted). Release or removal of the *res* from the control of the court ended the jurisdiction of the court, in accordance with the general rule.
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> * * * * *
>
> The destruction of the district court's jurisdiction puts an end to ours as well. Were we to reverse the judgment of the district court, there would be no *res* upon which our mandate could operate. (citation omitted).

Id. at 1458-59.

Republic's attempt to avoid the impact of *One Lear Jet* by the misapplication of 21 U.S.C. § 881(j) is unavailing.

In Personam Jurisdiction

Republic asserts that even though this case was commenced as an *in rem* forfeiture action, once the government personally served Republic with process, and Republic filed a general ap-

pearance, this case became, as between Republic and the government, one involving both *in rem* and *in personam* jurisdiction. Therefore, even if the court lost *in rem* jurisdiction over the *res*, there would be continuing jurisdiction to hear this appeal.

The short answer to this argument is that this forfeiture action was initiated under Rule C of the Supplemental Rules. The defendant is the property. Under this Rule, the only requirement for *in rem* jurisdiction is that upon the filing of the complaint, there must be a publication of notice that the property has been arrested. The claimants are invited to file claims. Republic was not a named defendant and was not summoned into court under Fed.R.Civ.P. 4. Although not required to do so, the government served potential claimants with copies of the complaint and warrant of arrest of the defendant property, which notified them that the *res* was subject to forfeiture. Like *One Lear Jet*, the government never invoked *in personam* jurisdiction when it brought suit. It served the property, not the purported mortgagee who later filed a claim. Its jurisdiction was based solely on the *res;* the government did not consent to the court's *in personam* jurisdiction. It merely brought a forfeiture action against the defendant property. As the court there held:

> [W]e reject the notion that the United States consented to *in personam* jurisdiction by invoking the district court's *in rem* jurisdiction initially. To hold that the government "consented" to *in personam* jurisdiction would be tantamount to deciding that a court has *in personam* jurisdiction over any participant in an *in rem* proceeding. This does not comport with the traditional analysis of *in rem* jurisdiction. (Footnotes omitted).

Id. at 1576-77. The United States cannot be construed as consenting to *in personam* jurisdiction merely by notifying potential claimants that an *in rem* action has commenced.

Consent to or Estoppel to Deny Jurisdiction

In May 1988, at the government's request, Republic agreed to an interlocutory sale of the property. The agreed motion states in pertinent part:

> All present or possible liens or other claims to the defendant property will attach to the proceeds held by the Marshal, and will be subject to future determination by the court without prejudice to the right of any claimant.

The district court's order, entered upon the motion states, in pertinent part, that "all interests of any lienors and claimants shall automatically transfer to the proceeds of the sale. These interests shall be afforded the same priority on the proceeds as these interests had on the real property...." Further, the proceeds were payable "to the United States Marshal for the Southern District of Florida, who shall retain same in his custody pending this court's further order." Republic argues that the "without prejudice" agreement for the interlocutory sale of the property constituted the government's consent to the continued jurisdiction of this court, regardless of what happened to the substituted *res*. Moreover, Republic submits that the government's conduct in obtaining Republic's consent to a physical change in the *res* by announcing it would be "without prejudice", and then utilizing the physical change to prejudice Republic by defeating jurisdiction prompts the application of the principle that where removal of the *res* from the court's territorial jurisdiction is accidental, fraudulent or improper, removal of the *res* does not defeat *in rem* jurisdiction.

We do not agree with Republic's conclusions drawn from its reading of the agreed motion and the order entered thereon. Republic's lien on the defendant property attached to the proceeds of the sale, subject to the future order of the court. It litigated its claim and pursued all of its remedies against the proceeds just as they could have been asserted against the defendant real property. The final judgment of forfeiture ordered the United States to dispose of the proceeds according to law.

Republic had the option to move for a stay of execution or post a supersedeas bond to stay the release of the substituted *res*. It did neither. By complying with the district court's order, the government's conduct in executing upon the judgment was neither fraudulent nor improper. *One Lear Jet*, 836 at 1574 n. 2. *See United States v. $79,000 in U.S. Currency*, 801 F.2d 738 (5th Cir. 1986).

Conclusion

This appeal is DISMISSED for want of jurisdiction.

UNITED STATES of America, Plaintiff,

v.

ONE SINGLE FAMILY RESIDENCE LOCATED AT 6960 MIRAFLORES AVENUE, CORAL GABLES, FLORIDA. Also Known As Lot 10, in Block 14, of Cocoplum Section 2 Plat "B", According to the Plat Thereof, as Recorded in Plat Book 115, at Page 84 of the Public Records of Dade County, Florida, Together With All Buildings, Fixtures and Appurtenances Thereto and All Improvements Thereon, Defendant.

No. 88-0349-CIV.

United States District Court,
S.D. Florida.

Feb. 21, 1990.

Stanley Beiley, Miami, Fla., for defendant Republic Nat. Bank.

Alan Dagen, Asst. U.S. Atty., Miami, Fla., for U.S.

MEMORANDUM OPINION

SCOTT, District Judge.

This controversy presents serious issues involving the civil forfeiture law, 21 U.S. C. § 881, and its impact upon lending institutions. It brings into play the duties and obligations of a commercial lending institution when unmistakable "red flags" have been raised as to the involvement of drug-related proceeds in a financial transaction. Concomitantly, it presents to the Court the duty to define the standard of conduct for lending institutions in such cases. We venture forward fully cognizant of this opinion's precedent-setting nature.

I. HISTORY OF THE CASE

The United States brings this *in rem* action[1] for forfeiture of real property located at 6960 Miraflores Avenue, Coral Gables, Florida.[2] The Government alleges that Indalecio Iglesias was the true owner of the property and that he has engaged in a continuing series of narcotics-related transactions in violation of 21 U.S.C. §§ 841(a)(1) and 846, resulting in over 100 million dollars in illegal proceeds. The Government further alleges that Iglesias used these illegal proceeds to purchase the defendant real property.

Thule Holding Corporation ("Thule"), a Panamanian corporation, filed its claim and answer as the record owner of the property. Initially, Thule alleged that it had no knowledge of any illegal activities related to the real property. However, shortly before trial, Thule executed a stipulation of settlement and consent to forfeiture.

Republic National Bank of Miami ("Republic") filed its claim and answer asserting an $800,000.00 lien interest in the real property pursuant to a mortgage and security agreement recorded September 30, 1987. The issues between Republic and the Government were tried to the Court on June 27 and 28, 1988. The questions litigated included probably cause, relation back and innocent ownership.

Following submission of the case, the Government moved to reopen the evidence, claiming that a previously undisclosed witness had critical evidence. After initially opposing the motion, Republic withdrew its opposition, provided that it could offer appropriate rebuttal evidence. That request was honored.

In October 1988, the trial resumed with the Government's witness, Rene J. Leonard, followed by a number of Republic's

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[1] The Court has jurisdiction pursuant to 28 U.S.C. §§1355 and 2461.

[2] Pursuant to stipulation between the parties, with Court approval, the property was sold for $1,050,000 on June 1, 1988. The funds are being held by the United States Marshal pending disposition of this case.

witnesses attacking Leonard's credibility and, thereafter, the Government's efforts to bolster his credibility. In light of the issues involved, the parties were provided ample opportunities to brief the multiple issues and they responded accordingly. Those memoranda have been quite helpful and counsel are commended. Our findings of fact and conclusions of law follow.[3]

II. PROBABLE CAUSE

A. Factual Background

1. Iglesias' Drug-Trafficking Activities

The Government called Drug Enforcement Administration ("DEA") Special Agent Lee Truesdale to establish probable cause.[4] Truesdale testified about his investigation of Indalecio "Andy" Iglesias, based on intelligence gathered through conversations with the Federal Bureau of Investigation ("FBI"), Internal Revenue Service ("IRS") and Customs Service ("Customs").[5]

Special Agent Truesdale testified that, on December 10, 1980, Iglesias was arrested on board a vessel stopped by Customs in which 300 pounds of marijuana were found in a sealed compartment. In April 1981, Iglesias was arrested for possession of 3,000 pounds of marijuana and fined $10,000.00 by Bahamian officials.

Truesdale also offered evidence obtained through "reliable" confidential informants. These informants possessed first-hand

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[3] Fed.R.Civ.P. 52(a); *see Anderson v. City of Bessemer City*, 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985).

[4] The government bears the initial burden of establishing probable cause to believe that the property is derived from illegal drug activities. Once the government has established probably cause, the burden shifts to the claimant, either to rebut the government's evidence or to prove innocent ownership. *United States v. A Single Family Residence*, 803 F.2d 625, (11th Cir.1986).

[5] In a forfeiture proceeding, the government may offer hearsay evidence to establish probable cause. *United States v. A Single Family Residence*, 803 F.2d 625, 629 n. 2 (11th Cir. 1986).

knowledge of Iglesias's drug importation activities. The informants were involved in smuggling both marijuana and cocaine with Iglesias.

Through an informant, Iglesias began to import cocaine from Colombia into the United States. The informant estimated that Iglesias transported approximately 30,000 kilograms of cocaine between 1980 and 1985. Based upon his knowledge, the informant estimated that Iglesias earned 180 million dollars in drug profits between 1980 and 1985. This estimate was based upon Iglesias' charge per kilo ($6,000 to $9,000) for transportation multiplied by the number of kilos (30,000) transported over the five-year period. Iglesias had no legitimate source of income for this time period.

2. Iglesias' Acquisition of Miraflores

During this period between 1980 and 1985, while Iglesias was importing narcotics from Colombia, he was also purchasing expensive property in South Florida. The defendant property located at 6960 Miraflores Avenue, Coral Gables, Florida, was one such property.

In 1983, acting through Thule, a shell corporation, Iglesias purchased the Miraflores lot and partially-constructed residence. Between 1983 and 1984, through a series of agents and contractors, Iglesias continued construction on the Miraflores property. Iglesias and his wife were present at the site and supervised construction of the residence. Iglesias paid one contract between $200,000 and $220,000 across this time period. This contractor was paid $7,000 to $9,000 every week or two weeks, in cash, carried in a briefcase. A second contractor was paid approximately $140,000. About 60% of these payments were in cash. After the house was constructed, Iglesias and his family were the only persons ever to reside at Miraflores.

3. Republic's Mortgage Interest

In August 1987, IRS agents contacted Inocente Hernandez concerning Iglesias. Shortly thereafter, Iglesias called Hernandez to find out whether the IRS had contacted him. Hernandez told Iglesias that the IRS had called to ask questions about Iglesias and the property at Miraflores. Alerted to the investigation, Iglesias immediately began his efforts to recoup his financial investment before possible Government action. Iglesias put the house up for sale and approached Miami lenders to secure a mortgage on the property.

Republic agreed to provide an $800,000 one-year balloon note on the property, which was appraised at $1.2 million. Once the loan was approved, Republic transferred the proceeds to the borrower's Swiss bank account. Iglesias had recently purchased an airplane ticket to Geneva. He has apparently fled the jurisdiction of the United States.

B. Legal Analysis

Republic contends that the Government has failed to show any nexus between the property seized and a particular drug deal. However, Republic "misunderstands the government's burden. The government need not trace the cash to specific transactions, or actually prove by a preponderance of evidence a substantial connection to drug dealing." *United States v. $41,305.00 in Currency and Traveler's Checks*, 802 F.2d 1339, 1343 (11th Cir. 1986). (citation omitted).

The Eleventh Circuit has recently stated the test as follows:

> In demonstrating a substantial connection between the property and illegal drug transactions, the government is not required to show a relationship between the property and a specific drug transaction. The government's burden of demonstrating probable cause is less than prima facie proof but more than mere suspicion.

United States v. Four Parcels of Real Property in Greene and Tuscaloosa Counties, 893 F.2d 1245 (11th Cir. 1990).[6] In addition, probable cause may be based "wholly on circumstantial evidence, and that evidence may include facts learned after the actual seizure of the money." *$41,305.00*, 802 F.2d at 1343. Applying these principles, the Court makes the following factual findings on the issue of probably cause:

1. The Miraflores lot, with the residence, was worth $1.2 million dollars.

2. Iglesias purchased the Miraflores property through Thule. Thule was a straw owner for Iglesias.

3. Iglesias paid a series of agents and contractors to build a luxury home on the Miraflores lot. The contractors were paid large sums of money, primarily in cash, in payments under $10,000, to avoid the currency reporting laws.

4. Iglesias and his wife were present at the site and supervised construction of the property. Iglesias and his family are the only persons who ever resided at the property.

5. Iglesias is a known drug-trafficker. He has previously been arrested and convicted on narcotics charges.

6. The Court accepts Special Agent Truesdale's testimony that Iglesias earned 180 million dollars from the illegal importation of narcotics during the relevant time-frame. Truesdale's testimony was based on his own investigation, statements of other investigating agents, and statements of a reliable confidential informant. The informant's statements were, in turn, corroborated by the statements of other informants with personal knowledge.

7. Iglesias had no legitimate source of income during this time.

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[6] The "substantial connection" requirement is not found in the statute, but rather in the legislative history. *Four Million, Two Hundred and Fifty-Five Thousand Dollars*, 762 F.2d at 902 n. 14.

8. Iglesias knew that he was under investigation by the IRS, and that the Miraflores property was part of this investigation.

9. As soon as Iglesias became aware of the investigation, he put the house up for sale, secured an $800,000 mortgage loan on the property, and sent the money to a Swiss bank account.

The Court finds that probable cause exists to believe that Iglesias bought the Miraflores property and constructed the residence with drug profits, and then laundered the money through the Republic mortgage into his Swiss bank account. We have judged the facts "not with a clinical detachment, but with a common sense view to the realities of normal life." *Wilson v. Attaway*, 757 F.2d 1227, 1235 (11th Cir. 1985). Under this standard, we have also taken "into account, as a 'common experience consideration,' the fact that Miami has become a known center for drug-smuggling and money-laundering." *Four Million, Two Hundred and Fifty-Five Thousand Dollars*, 762 F.2d at 904; *United States v. One 1980 Bertram 58' Motor Yacht*, 876 F.2d 884, 888 n. 4 (11th Cir. 1989). Considering the "totality of the circumstances," *Four Parcels of Real Property*, 893 F.2d 1245, we conclude that the Government has met its burden of showing probable cause to forfeit the property.

III. RELATION BACK

Having established the probable cause requirement, the Government contends that Republic's claim must fail as a matter of law under the relation back doctrine. Under this doctrine, the interest of the United States vests in the property upon commission of the offense giving rise to the forfeiture. 21 U.S.C. § 881(h) (1984 amendment codifying relation back doctrine). A final judgment of forfeiture merely confirms the government's interest and therefore relates back to the time of the offense. Thus, the Government argues that Republic, as a subsequent purchaser, could not have acquired any interest in the property.

The genesis of the Government's position is *United States v. Stowell*, 133 U.S. 1, 10 S.Ct. 244, 33 L.Ed. 555 (1889), decided

over one hundred years ago. In *Stowell,* 133 U.S. at 16-17, 10 S.Ct. at 247, the Supreme Court stated that forfeiture of property to the United States relates back to the time of the offense and "avoids all intermediate sales and alienations, even to purchasers in good faith." The forfeiture statute in *Stowell* applied to property owned by a person who "knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same." *Stowell,* 133 U.S. at 2 n. 1, 10 S.Ct. at 244 n. 1. Thus, the Supreme Court in *Stowell* merely held that "an exception for innocent holders did not prevent forfeiture from relating back in the case of holders who did not qualify for the exception." *Eggleston v. State of Colorado,* 873 F.2d 242, 247 (10th Cir. 1989).

Since *Stowell* was decided, Congress has provided an innocent owner exception to most forfeiture statutes, including the civil forfeiture statute, 21 U.S.C. § 881. The innocent owner exception protects "the interest of an owner" who proves that the offense was committed without its "knowledge or consent." 21 U.S.C. § 881(a)(7). The Government contends, however, that the innocent owner provision only applies to claimants who owned the property at the time of the offense, and not to those who acquired the property afterward. To test the validity of this contention, the Court must review the language and legislative history of the innocent owner provision, 21 U.S.C. § 881(a)(7).

A. Legislative History

Section 881(a)(7) provides that "no property shall be forfeited ... to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner." The issue is whether the tern "owner" includes a claimant who acquired an interest in the property subsequent to the offense leading to forfeiture. The plain meaning of the language employed by Congress is the "primary, and ordinarily the most reliable" source of legislative intent. *Public Citizen v. United States Department of Justice,* _____ U.S. _____, 109 S.Ct. 2558, 105

L.Ed.2d 377 (1989). In this case, however, the meaning of the statute is not clear. Moreover, because "statutes always have some purpose," *id.*, a review of the legislative history can only assist the Court in divining Congressional intent.

Congress enacted the innocent owner exception "in order to protect the individual who obtains ownership of proceeds with no knowledge of the illegal transaction." Congressional Record-Senate, July 27, 1978, p. S23056 (remarks of Senator Culver). Congress intended "to make it clear that a bona fide party who has no knowledge or consent to the property he owns having been derived from an illegal transaction, that party would be able to establish that fact under this amendment and forfeiture would not occur." *Id.* at S23057 (remarks of Senator Nunn).

Thus, Congress believed that the innocent owner exception would protect bona fide purchasers who acquired ownership of the property subsequent to the offense giving rise to the forfeiture. The Government's position to the contrary is simply not supported by the legislative history of the statute.

B. Case Law

The Eleventh Circuit has not had the opportunity to decide whether the relation back doctrine prevents a bona fide purchaser from acquiring an interest in the property subsequent to the offense. Because the Court of Appeals has never denied the claim of a subsequent bona fide purchaser, the applicability of the innocent owner provision remains an open question.

The Government relies on *United States v. $41,305.00 in Currency and Traveler's Checks*, 802 F.2d 1339, 1346 (11th Cir. 1986). However, the court in *$41,305.00* did not reach the issue. Instead, the court merely expressed its doubt that intervention in a forfeiture proceeding could be premised on an interest acquired after the offense. The court stated in dicta: "Illegal use immediately vests title to the property in the sovereign, and cuts off the rights of third parties to obtain legally protectable interests in the property." Because *$41,305.00* was decided on a motion to

intervene, the claimant apparently did not raise the innocent owner exception and the court had no reason to consider the legislative history of that provision. Therefore, in our view, *$41,305.00* is not dispositive of the issue. *See United States v. One Single Family Residence*, 683 F.Supp. 783, 786-87 n. 1 (S.D.Fla. 1988) (Aronovitz, J.) (finding that *$41,305.00* left the issue open for another day).[7]

The remaining cases relied upon by the Government are inapposite. The forfeiture statutes at issue in *Florida Dealers and Growers Bank v. United States*, 279 F.2d 673 (5th Cir. 1960), and *Wingo v. United States*, 266 F.2d 421 (5th Cir. 1959) did not provide an exception for innocent owners.[8] Similarly, in *United States v. Four Parcels of Real Property at Lake Forrest Circle*, 870 F.2d 586 (11th Cir. 1989), and *United States v. One 1967 ChrisCraft 27 Foot Fiber Glass Boat*, 423 F.2d 1293 (5th Cir. 1970), the claimants could not demonstrate innocent ownership and therefore the court did not consider the issue.

As to *United States v. One Piece of Real Estate*, 571 F.Supp. 723 (W.D.Tex. 1983), that court only held that lienholders were not entitled to interest or other charges accruing after the date of the seizure. The court did not hold that the lienholders' interests ended as of the date of the offense. *See also United States v. All That Tract and Parcel of Land*, 602 F.Supp. 307, 313 n. 11 (N.D.Ga. 1985) (rejecting *One Piece of Real Estate*).

At least two courts have held that the innocent owner exception applies to bona fide purchasers, notwithstanding the relation back doctrine. In *Eggleston v. State of Colorado*, 873 F.2d 242, 247 (10th Cir. 1989), the Tenth Circuit held: "Forfeiture therefore cuts off the rights of subsequent lienholders or purchasers, subject to the so-called innocent owners exception in

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[7] The Eleventh Circuit has ordinarily considered the issues together. *See, e.g., United States v. Four Parcels of Real Property on Lake Forest Circle*, 870 F.2d 586, 593-94 (11th Cir.1989) (denying claimant relief because the forfeiture related back *and* the claimant could not prove innocent ownership).

[8] Moreover, the court in *Florida Dealers* remanded for a determination of whether remission or mitigation should be allowed.

section 881(a)(6)." In *United States v. One Single Family Residence*, 683 F.Supp. 783 (S.D.Fla. 1988) (Aronovitz, J.), another court in this district reached the same result. In addition to the legislative history, that court relied on section 881(a)(6), which governs proceeds and therefore contemplates third party recipients. The court also relied in part on the criminal forfeiture statute, which expressly protects bona fide purchasers. *See also United States v. One Parcel of Real Estate*, 715 F.Supp. 360, 363 (S.D.Fla. 1989) (Gonzalez, J.) (Congress did not intend "to place all land titles in doubt because of the 'relation back'" doctrine).

Indeed, more recently, the Supreme Court has suggested that a contrary result would be unconstitutional. In *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689-90, 94 S.Ct. 2080, 2094-95, 40 L.Ed.2d 452 (1974), the Court stated:

> [I]t would be difficult to reject the constitutional claim of an owner whose property had been taken from him without his privity or consent.... Similarly, the same might be said of an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be expected to prevent the proscribed use of his property; for in that circumstance, it would be difficult to conclude that forfeiture served legitimate purposes and was not unduly oppressive.

It is therefore imperative that we give effect to the legislative history of the innocent owner provision, in keeping with our duty "to avoid deciding difficult constitutional questions where the text fairly admits of a less problematic construction." *Public Citizen v. United States Department of Justice*, _____ U.S. _____, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989). If the interest of an innocent owner is protected from forfeiture, *a fortiori*, the interest of a bona fide purchaser is also protected. For these reasons, the Court concludes that a bond fide purchaser is entitled to the

protection of the innocent owner exception to the civil forfeiture statute, 21 U.S.C. § 881(a)(7).[9]

IV. INNOCENT OWNERSHIP

Having determined that Republic may assert the innocent owner provision, the Court must now consider whether Republic has met the standard of innocent ownership. To meet the requirements of this provision, the claimant must establish that the offense was committed without its "knowledge or consent." 21 U.S.C. § 881(a)(7). Republic argues that this standard contemplates actual knowledge by the claimant. The Government argues, however, that the claimant must establish that it (1) lacked actual knowledge; (2) lacked constructive knowledge; and (3) did all that reasonably could be expected to prevent the offense. For this third element, the Government cites *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 689, 94 S.Ct. 2080, 2094, 40 L.Ed.2d 452 (1974), in which the Supreme Court stated that it might be difficult to reject the due process claim of a person who "had done all that reasonably could be expected to prevent the proscribed use of his property." The forfeiture statute at issue in *Calero-Toledo* did not provide an exception for innocent owners.

The Court notes that the Eleventh Circuit has made conflicting statements about the standard to be applied under the innocent owner provision of the civil forfeiture statute. In *United States v. Four Million, Two Hundred and Fifty-Five Thousand Dollars*, 762 F.2d 895, 906 (11th Cir. 1985), the Eleventh Circuit agreed with the claimant "that the application of the statutory 'innocent owner' defense turns on the claimant's actual knowledge, not constructive knowledge." However, in a footnote, the

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[9] To the extent that *United States v. Walker*, 889 F.2d 1317 (4th Cir. 1989) is to the contrary, we decline to follow it. *Walker* did not concern the precise issue before us. Instead, the court in *Walker* held that the relation back doctrine prevented heirs from acquiring an interest [in] [sic] property subject to forfeiture. Moreover, the court did not even consider the legislative history of the innocent owner provision. For these reasons, we do not find *Walker* persuasive on the issue before us.

court left "for another day the question of the *Calero-Toledo* dicta to forfeiture actions under 21 U.S.C. § 881(a)(6)." *Id.* at 906 n. 24. More recently, the Eleventh Circuit has incorporated the *Calero-Toledo* language into the standard for innocent ownership: "To prevail on a defense of innocent ownership, a claimant must prove not only that it was uninvolved in and unaware of the activity upon which forfeiture is sought, but also that it did everything that reasonably could be expected of it to prevent the activity." *United States v. One 1980 Bertram 58' Motor Yacht,* 876 F.2d 884, 888-89 (11th Cir. 1989).

Republic contends that the record does not demonstrate actual knowledge or consent to the purchase and construction of Miraflores with drug proceeds, or the laundering of money through the Republic loan. This "argument ignores the statutory requirement that the claimant, and not the government, bears the burden of proof on the 'innocent owner' defense. Under 21 U.S.C. § 881(a)(6), the government need not prove, and the district court need not find, that the claimant *had* actual knowledge. Rather, it is the claimant's responsibility to prove the *absence* of actual knowledge." *United States v. Four Million, Two Hundred and Fifty-Five Thousand Dollars,* 762 F.2d 895, 906-07 (11th Cir. 1985).

The Court has found only one reported decision assessing the standard to be applied to a commercial lending institution under the innocent owner provision. In *United States v. A Fee Simple Parcel of Real Property,* 650 F.Supp. 1534 (E.D.La. 1987),[10] the court held that the bank had established innocent ownership on the facts presented because (1) the borrower had a long-standing relationship with the bank; (2) the bank was not aware of any legal problems of the borrower; (3) the bank conducted a title search on the defendant property to ensure that the borrower was the true owner; and (4) even though the bank failed to obtain a financial statement from the borrower, the property was fully secured by collateral.

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[10] The Court is surprised that neither party brought this case to our attention, even though it was decided before this action was filed.

The conduct of the lender in *A Fee Simple* provides a study in contrast with the Miraflores transaction. The Court has distilled the trial record and we make the following factual findings on the issue of Republic's state of knowledge:

1. Thule, the borrower, is a Panamanian shell corporation;
2. The borrower's primary asset is a residence;
3. The residence was vacant at the time;
4. The borrower was about to sell its primary asset;
5. The lender did not ask the purpose of the loan;
6. The lender failed to conduct a title search;
7. The corporate borrower and Antonio Munoz Caballero ("Munoz"), the sole stockholder and a guarantor on the mortgage, were unknown to the lender;
8. Ramon Puentes, the second guarantor, had no known connection with the borrower;
9. Puentes made inconsistent statements of ownership.
10. The lender offered an $800,000 one-year balloon note on property valued at $1.2 million;
11. The borrower had no known source of repayment;
12. Fred de la Mata, president of Republic, was intimately involved in the transaction;
13. The lender quickly approved the loan outside normal channels;
14. The lender cannot document board approval of the loan, although documents indicate the board endorsed the loan after the closing;
15. Puentes, the guarantor, used part of the loan proceeds to buy expensive gifts for the bank president's family, and to buy an airplane ticket to Geneva for Iglesias;

16. The lender transferred the proceeds of the loan to the borrower's Swiss bank account.

There can be no question that the circumstances surrounding approval of the loan were suspicious. Republic was approached by Ramon Puentes, who claimed that he and a "partner" owned the property. However, documents reviewed by the lender show that Thule was the sole owner of the property, and that Thule's stock was, in turn, wholly owned by Antonio Munoz Caballero ("Munoz"). Yet Republic never questioned Puentes about this discrepancy, and did not even conduct a title search of the property.

The borrower, Thule, was a Panamanian shell corporation whose principal asset was a vacant residence. On this point, we adopt the testimony of Special Agent Truesdale:

> Through my experience and training I have come to learn Panamanian corporations and other offshore corporations are preferred by drug smugglers to conceal their assets, and to also form a base of what appears to be legitimate income.
>
> They usually do this by setting up what I would refer to as shell corporations overseas. In turn, they would set up bank accounts in the United states.
>
> Oftentimes, the accounts in the United States are in the name of trustee or nominee individuals. Once the money is transferred from overseas back into the United States, it is basically clean money or what we refer to as laundered money at that time.
>
> They will oftentimes pay taxes and do all the legalities to make things look legitimate with this money.

Transcript of Trial Testimony, at pages 22-23.

Although Puentes, the guarantor, had an existing relationship with Republic, the borrower did not. Indeed, both Thule and Munoz, Thule's sole shareholder, who agreed to sign as guarantor,

were unknown to Republic. Republic did not assess Munoz' financial standing and did not even meet him until the closing. The loan was sizeable — $800,000 on a $1.2 million dollar residence, interest payments for the first year and a one-year balloon note. Yet the borrow could not demonstrate how the loan was to be repaid. The borrower was not doing business and had no source of income. Because the borrower's financial statements were not audited, a lender would ordinarily require further proof of financial standing. Republic failed to do so, and did not even establish a repayment schedule.

Although the collateral was sufficient to cover the loan, we do not believe that banks are in the business of lending money with the intent to force sale of the property. Moreover, even though the house was for sale, the lender did not secure an undertaking by the borrower to use the proceeds of the sale for repayment of the loan. Nor did the lender ask Thule why a loan was necessary if the property was about to be sold.

The record also establishes that the president of Republic, Fred de la Mata, had an unusually close involvement in this loan transaction. De la Mata and other bank officers personally inspected the property. De la Mata claims that he presented the loan to the board for approval during a break at a convention held at the Sofitel Hotel, but he cannot document this meeting. Moreover, the only documentary evidence shows that the board endorsed the loan subsequent to the closing on the property.

Perhaps the most revealing fact in the record is Puentes' sizeable gift to de la Mata's family. Once the loan was approved, Puentes gave de la Mata's son and his fiance a Caribbean honeymoon package consisting of hotel reservations and two first-class, round-trip tickets to St. Thomas and St. Maarten. The package cost approximately $3,000. The travel agent testified that Iglesias actually booked the trip. Iglesias ordinarily paid in cash. This time, the travel agent was paid by check. The check was signed by Munoz, drawn on the new Republic account.

Finally, we note that after the loan was approved, Republic transferred the loan proceeds to Thule's Swiss bank account, through two cashiers' checks for $350,000 each. This transaction was handled by de la Mata's personal assistant.

Republic claims that many elements of this loan transaction are not unusual for South Florida. We emphasize that it is the totality of the circumstances that underlies our finding of actual knowledge. Moreover, even if the loan was not unusual for South Florida, that does not end the Court's inquiry.[11] The question is not whether this was a commercially sound loan. Rather, the Court must consider whether the lender knew that the property had been acquired with drug proceeds. An unusual loan transaction is merely evidence of the lender's knowledge. In any event, we do not believe that Republic has established commercial reasonableness on this factual record.[12]

At trial, de la Mata conceded that he did not rely on Munoz as guarantor of the loan. Nor do we believe that de la Mata relied on Thule. De la Mata testified again and again that the reason he did not investigate either Thule or Munoz was because he relied on Puentes as a long-standing customer of the bank. De la Mata expected to be paid — not by Thule, or even Munoz, but by Puentes. Yet Puentes had no known connection with either Thule or Munoz. Puentes had no known reason to agree to pay the mortgage.

The only rational conclusion is that Republic knew that Thule, a mere shell corporation, was controlled by Puentes. De la

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[11] The Government's expert testified that the loan was "unusual and unsound." The Court agrees, and we adopt the testimony of the Government's expert. Moreover, even the bank's expert admitted that the loan transaction might be considered unusual outside South Florida.

[12] Miraflores argues that the loan must have been reasonable because another bank had offered Puentes a loan on Miraflores. That lender offered a $750,000 loan at sixteen per cent interest. Beyond those facts, the particular circumstances of that loan are not before the Court. Again, we emphasize that determining the lender's knowledge is a fact-sensitive inquiry. That loan offer may well have been improper. Even so, Republic cannot be absolved by another lender's wrongdoing.

Mata must have known that Thule was a vehicle for Puentes. De la Mata knew that Puentes was trying to unload Miraflores. He did not ask why. Instead, in the face of overwhelming evidence, he chose to look the other way. De la Mata deliberately closed his eyes to what he had every reason to believe was the truth. *See United States v. Alvarez*, 837 F.2d 1024, 1028 (11th Cir. 1988) ("deliberate ignorance"); *United States v. Restrepo-Granda*, 575 F.2d 524, 529 (5th Cir. 1978) ("willful blindness").

Republic argues that to deny its claim would mean that banks must become agents for the Government in investigating prospective customers. We disagree. In *United States v. Banco Cafetero Panama*, 797 F.2d 1154 (2d Cir. 1986), the Second Circuit rejected a similar argument in holding that banks might be subject to forfeiture of bank account assets derived from drug proceeds.[13] The Court stated:

> Appellants contend that a broad application of the forfeiture statute to bank accounts will wreak havoc in the banking industry. They argue that banks will accept deposits at their peril, since investigation of the sources would be costly, time-consuming, and often unilluminating. The risk is vastly overstated. A bank has no duty to investigate the source of customers' deposits. It acts at its peril only when, as a passive receiver of knowledge, it learns that a deposit is derived from drug profits and nevertheless accepts that deposit. The statute imposes no investigatory costs on the banking system.

Banco Cafetero Panama, 797 F.2d at 1162.

Puentes was a reliable source of business. De la Mata wanted to make a profit. The honeymoon gift only sweetened the deal. However, drug proceeds are not a permissible source of business for the financial community. As the Eleventh Circuit has observed, "Those who knowingly do business with drug dealers do so at their own risk. [Claimant's] interpretation of 21 U.S.C. § 881(a)(6) would completely insulate money-launderers, and

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[13] Again, neither party has cited this decision.

others who knowingly do business with drug dealers, from possible forfeiture of their ill-gotten gains." *United States v. Four Million, Two Hundred, Fifty-Five Thousand*, 762 F.2d 895, 905 (11th Cir. 1985).

We recognize that a financial cost may attach to imposition of such a standard, in the sense of missed financial opportunity. However, Congress has determined that the financial community must bear some of the costs, because narcotics inflict a much greater cost on society. We agree with the Second Circuit that Congress did not intend to exempt banks from this mandate.

> Nothing in the terms or legislative history of the forfeiture statute gives the slightest reason to believe that Congress wished to accord banks any special insulation from vulnerability to forfeiture of assets traceable to drug proceeds. On the contrary, Congressional concern with money laundering points in precisely the opposite direction.

United States v. Banco Cafetero Panama, 797 F.2d 1154, 1162 (2d Cir. 1986); *cf. ARCA Airlines, Ltda. v. United States Customs Service*, 726 F.Supp. 827 (S.D.Fla. 1989) (Scott, J.) (For common carriers, "[s]ecurity measures [to detect narcotics] are part of the cost of doing business. We do not find the cost excessive in view of the risk.").

The Court concludes that Republic has failed to meet its burden of showing lack of actual knowledge.[14] On the contrary, every fact in the record points irrefutably to Republic's knowing involvement. These facts, when considered in their totality, suggest actual knowledge, if not complicity, on the part of the lender.[15] Congress has sent a clear message in the recent legisla-

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[14] Thus, like the court in *Four Million, Two Hundred and Fifty-Five Thousand Dollars*, 762 F.2d at 906 n. 24, we need not decide whether the claimant must prove that it did all that reasonably could be expected under the *Calero-Toledo* standard.

[15] In view of these factual findings, it is not necessary for the Court to rule on the credibility of the Government's final witness, Rene J. Leonard. However, if the Court were forced to decide this issue, we would be inclined to reject Leonard's testimony.

tion enacted that it will not permit the financial community to knowingly do business with drug dealers. This opinion merely follows that clear message. We do so with little reluctance.

V. CONCLUSION

Based upon the foregoing, it is hereby ORDERED as follows:

1. The Defendant property is subject to forfeiture.

2. Republic's claim is DENIED.

3. The United States is entitled to final judgment.

4. The United States shall submit a final judgment forthwith in accordance with this opinion.

5. The Court retains jurisdiction to effectuate the terms of this order and to assess costs upon appropriate motion.

DONE and ORDERED.

ADI:tc
final judg/forfeiture

FILED by (initialled) D.C.
MAR 15, 1990
ROBERT M. MARCH
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIAMI

CLOSED
CIVIL
CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 88-0349-CIV-SCOTT

UNITED STATES OF AMERICA

Plaintiff,

v.

ONE SINGLE FAMILY RESIDENCE LOCATED AT 6960 MIRAFLORES AVENUE, CORAL GABLES, FLORIDA, ALSO KNOWN AS LOT 10, IN BLOCK 14, OF COCOPLUM SECTION 2 PLAT "B", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 115, AT PAGE 84 OF THE PUBLIC RECORDS OF DATE COUNTY, FLORIDA, TOGETHER WITH ALL BUILDINGS, FIXTURES AND APPURTENANCES THERETO AND ALL IMPROVEMENTS THEREON,

Defendant.

FINAL JUDGMENT OF FORFEITURE

THIS CAUSE came on before this Court upon trial. This Court has issued its memorandum opinion herein. Accordingly, this Court finds as follows:

1. On February 26, 1988, plaintiff filed a Complaint for Forfeiture *In Rem* against the defendant property alleging that the property is forfeit to the United States of America pursuant to 21 U.S.C. §881(a)(6).

2. The defendant property, which includes all improvements, fixtures, and appurtenances thereto or thereon, is more particularly described as:

> Lot 10, in Block 14, of Cocoplum Section 2 Plat "B", according to the Plat thereof, as recorded in Plat Book 115, at Page 84 of the Public Records of Dade County, Florida.

3. On February 26, 1988, in accordance with the above Complaint, a Warrant of Arrest in Rem of the defendant property was issued and duly executed on March 7, 1988.

4. On March 28, 1988, Public Notice of Action and Arrest of the defendant property appeared by publication in the Miami Review and Proof of Publication of Public Notice of Action and Arrest was filed with the Court on April 5, 1988.

5. In addition to Public Notice of Action and Arrest having been completed, plaintiff personally served the following:

> a. Thule Holding Corporation, by and through its registered agent, as record owner of the defendant property on March 2, 1988.
>
> b. Republic National Bank of Miami, a potentially interested party, on March 2, 1988.
>
> c. Indalecio and Margarita Iglesias, potentially interested parties, on March 1, 1988.

d. Additionally, the Florida Department of Environmental Regulation was served via certified mail, return receipt requested. Notice was accepted on March 2, 1988.

6. Republic National Bank and Thule Holding Corporation have filed claims alleging interests in the defendant property.

7. No other parties have filed claims or answers in this matter.

8. A Memorandum Opinion has been entered by this Court denying all interests claimed by Republic National Bank. Thule Holding Corporation consented to forfeiture of its interests on June 9, 1988. On May 31, 1988, this Court entered an order for interlocutory sale. The defendant real property has already been sold pursuant to that order and this final judgment addresses the remaining proceeds of that sale.

9. The time for which other persons may file a claim and answer has expired.

Based on the above findings, and the Court being otherwise fully advised in the premises, it is hereby;

ORDERED AND ADJUDGED:

1. The court finds that plaintiff United States of America has probable cause to forfeit the defendant real property. This Court finds further that plaintiff United States of America had reasonable cause for this seizure pursuant to 28 U.S.C. §2465.

2. Republic National Bank's claim is denied with prejudice.

3. The proceeds of the interlocutory sale of the defendant real property is forfeited to the United States of America pursuant to 21 U.S.C. §881(a)(6), and no right, title, or interest to those proceeds shall exist in any other party.

4. Since the defendant real property has already been sold pursuant to this Court's prior orders, the United States of America is hereby directed to dispose of the remaining proceeds of the interlocutory sale, in accordance with law.

DONE AND ORDERED in Chambers at Miami, Florida, this *15* day of *March*, 1990.

/s/
UNITED STATES DISTRICT JUDGE
THOMAS E. SCOTT

cc: U.S. Marshal (2 certified)
Alan Dagen — AUSA
Stanley Beiley, Esq.

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
AUG 7 1991
MIGUEL J. CORTEZ
CLERK

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 90-5295

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE SINGLE FAMILY RESIDENCE LOCATED AT 6960 Miraflores Avenue, etc.,

Defendant

REPUBLIC NATIONAL BANK OF MIAMI,

Claimant-Appellant,

THULE HOLDING CORP.,

Claimant.

On Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF HEARING EN BANC (Opinion *June 10, 1991*, 11th Cir., 19__, _____ F.2d _____).

Before: KRAVITCH and BIRCH, Circuit Judges, and DYER, Senior Circuit Judge.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE

ORD-42
(9/90)

FILED
U.S. COURT OF
APPEALS
ELEVENTH CIRCUIT
AUG 26 1991
MIGUEL J. CORTEZ
CLERK

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

For The Eleventh Circuit

No. 90-5295

D.C. Docket No. 88-349-CIV-TES

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE SINGLE FAMILY RESIDENCE LOCATED AT 6960 Miraflores Avenue, etc.,

Defendant

REPUBLIC NATIONAL BANK OF MIAMI,

Claimant-Appellant,

THULE HOLDING CORP.,

Claimant.

Appeal from the United States District Court
for the Southern District of Florida

Before: KRAVITCH and BIRCH, Circuit Judges, and DYER, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the appeal in the above styled and numbered cause be and the same is hereby DISMISSED;

IT IS FURTHER ORDERED that claimant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Entered: June 10, 1991
For the Court: Miguel J. Cortez,
Clerk

By: /s/ _____
Deputy Clerk

ISSUED AS MANDATE: AUG 26, 1991